IN THE HIGH COURT OF JUDICATURE AT BOMBAY

O. O. C. J.

WRIT PETITION NO.2563 OF 2004

Vithal Haribhau Salvi & Ors. ...Petitioners.

Versus

Navyuvak Harija Utthapan Multi Unit Industrial

Co-operative Society Ltd. & Ors. ...Respondents.

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Mr.A. S.Desai for the Petitioners.

Mr. P. M. Pradhan with Mr. E.R. Naik for Respondent No.1, 5 to 12.

Mr. P.M. Palshikar, AGP for Respondent No.2.

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CORAM : DR. D.Y. CHANDRACHUD, J.

24th January 2005.

P.C.:

The First Respondent was formed in 1979 and was allotted land bearing Survey No.246 (Part) at Bhandup by the Government of

India for the construction of a housing colony for accommodating members of the Society at concessional rates. The Salt Department of the Government of India passed the original order of allotment. In the original membership of the Society, 80% were to consist of dalits and 20% were to be from the open community. The original membership of the Society was to be of 112 persons of which 90 persons would be dalits and 22, non-dalits. The membership of the Society initially consisted of 33 persons, 28 of them belonging to the Scheduled Castes and 5 were OBCs. In addition, 78 persons made applications for enrollment. The Registrar of Co-operative Societies directed the Society to enroll these additional persons as members. This direction was challenged by a group of members, but was rejected by this Court. A Special Leave Petition was thereafter filed before the Supreme Court in which the Supreme Court granted leave and disposed of the appeal on 12th April 1996 in **J.P. Ravidas Vs. Navyuvak Utthapan Multi Unit Industrial Cooperative Society Ltd.** (1996) 9 SCC 300. A Bench of two Learned Judges consisting of Mr.Justice K.Ramaswamy and Mr.Justice G.B. Pattanaik held that the

action of the President of the Society in enrolling non-Dalits defeated the purpose of the Government of India in giving land for construction. The action of the Registrar of Co-operative Societies was accordingly held to be illegal and the orders of this Court and of the Registrar directing the grant of membership came to be set aside. The Registrar was directed to conduct an enquiry and to identify as to how many among 78 members were Dalits and to direct their enrollment as members of the Society. The Supreme Court issued consequential directions to the effect that the Society would invite applications from dalits to make up the short fall of 90 dalit members and that the non-dalits should be accommodated only against the 20% quota available to them.

2. Subsequently, an Interim Application (I.A. 5 in Civil Appeal 7745 of 1996) was filed before the Supreme Court on 23rd November 1998. The Supreme Court appointed Mr.Justice D.M. Rege, a former Judge of this Court to submit a status report on the position of the property and the possibility of complying with the order of the Court by

carrying out additional construction instead of evicting non-dalit members. The Commissioner appointed by the Supreme Court submitted his report and accordingly the matter was dealt with in terms of a further order dated 1st September 2000 by a Bench consisting of the Hon'ble Mr.Justice G.B. Pattanaik and Mr.Justice U.C. Banerjee. The Supreme Court noted that as several non-dalit members who were original members of the Society would have to be evicted from the flats which they were occupying, an interlocutory application had been filed for modification of the aforesaid order and it was contended that it was possible to construct new flats over the existing building so that all dalit members would be accommodated without evicting non-dalits who were occupying the flats on these flats being duly alloted. The Supreme Court noted that in pursuance of the report of Justice D.M. Rege, the Court has permitted the builder to construct additional floors so that all dalit members of the Society could be fully accommodated. Accordingly, flats had been allotted on the additional construction. The Supreme Court held that as a result, the direction contained in the earlier judgment in J.P. **Ravidas vs.**

Navayuvak Utthapan stood fully complied with:

> "Thus the directions of this Court in J. P. Ravidas (supra) have been fully complied with and yet the original members of the society who are non-dalits are not required to vacate their flats. In view of this state of affairs no further direction in the matter is required to be issued and we hope and trust that dalit and non-dalit members occupying different flats in the same building will continue to remain as good neighbours."

3. It would also appear that 12 persons were allotted flats as nominees of the Municipal Corporation. The subject matter of allotment to these 12 members was considered in an order dated 7th July 1997 of the Supreme Court in I.A. 1 in Civil Appeal No.7745 of 1994. The order of the Supreme Court recorded a concession of the Counsel for the State and the Supreme Court observed that the allotment made to the employees of the Municipal Corporation was

directed to be regularised out of the general category.

4. The position, therefore, which emerges is that consequent upon the order passed by the Supreme Court on 1st September 2000, the directions which were issued in the earlier judgment dated 12th April 1996 were held to have been fully complied with.

5. The dispute in the present case arises out of an election that was conducted to the Managing Committee of the Society in the year 2002. It is common ground that the Voters' List for the election consisted of 125 persons out of which 123 actually participated in the election. These 123 members comprise of 111 members whose occupation was regularised in terms of the order of the Supreme Court dated 1st September 2000 and 12 allottees who were employees of the Municipal Corporation whose allotment was to be regularised in terms of the order dated 7th July 1997 of the Supreme Court. The Co-operative Court set aside the election. In appeal, the Co-operative Appellate Court was of the view that those allottees

whose occupation had been regularised by the Supreme Court were lawfully entitled to participate in the election and that their case could not be reopened.

6. The term of the Managing Committee elected in the election of 2002 has now already expired in 2003 and it would appear that the fresh election that was due was not conducted due to the pendency of these proceedings. The view of the Co-operative Appellate Court in regard to those persons whose allotment has been regularised as a result of the orders passed by the Supreme Court on 7th July 1997 and 1st September 2000 cannot be possibly regarded as erroneous. It appears that certain additional persons have also been granted membership of the Society in the year 2003. It is not necessary for the Court to comment upon whether these additional persons (over and above 123) are lawfully entitled to participate in the next election since it is common ground that they do not form part of the Voters' list which is the subject matter of these proceedings. They are not parties here and a decision cannot be arrived at in their absence. In

the circumstances, since the term of the Managing Committee has already expired, it would be appropriate and proper to direct that a fresh election be held at the earliest in accordance with the Bye-laws of the Society and other governing provisions of law. Counsel appearing on behalf of the First Respondent states that the First Respondent would prepare the voters' list for the ensuing election. In order to obviate any dispute in regard to the conduct of the election, the Assistant Registrar is directed to nominate an officer subject to his jurisdiction for the purpose of conducting the ensuing election. All the parties before the Court are agreeable to this course of action in order to obviate any dispute. The Petition is disposed of in the above terms.

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